

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ARTURO ANAYA,

Petitioner,

v.

No. 16-cv-0331 MV/SMV

**TIMOTHY HATCH and ATTORNEY GENERAL
OF THE STATE OF NEW MEXICO,**

Respondents.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Petitioner Arturo Anaya's "Motion to U.S. District Judge on Prima Facie Evidence" [Doc. 38], filed on July 31, 2018. Respondents filed a response on August 1, 2018. [Doc. 39]. Petitioner replied on August 14, 2018. [Doc. 40]. Petitioner also filed a Motion for New Trial on August 17, 2018. [Doc. 41]. The motions are without merit and will be denied.

Background

Petitioner, proceeding pro se, filed a petition pursuant to 28 U.S.C. § 2254 on April 22, 2016. [Doc. 1]. The magistrate judge found that the petition contained both exhausted and unexhausted claims. [Doc. 28] at 7–8. He gave Petitioner an opportunity either to withdraw the unexhausted claims or dismiss the entire action without prejudice (in order to allow Petitioner to take his unexhausted claims to state court). *Id.* at 8–9. Petitioner declined to withdraw his unexhausted claims, [Doc. 29] at 3, and on recommendation by the magistrate judge, the previous presiding judge dismissed the petition without prejudice, [Doc. 30] at 12. Final judgment was entered on November 6, 2017. [Doc. 32].


Anaya filed his first post-judgment motion on November 16, 2017, asserting that his state-court conviction should be overturned because he acted in self-defense. [Doc. 33]. The Court denied the motion on February 23, 2018, because it failed to meet the Rule 59(e) standard for relief from judgment, and because it failed to address the reason his petition was denied in the first place, which was lack of exhaustion. [Doc. 36] at 4–6.

Anaya filed these second and third post-judgment motions on July 31, 2018, and August 17, 2018. [Docs. 38, 41]. He continues to argue that his state conviction should be overturned because he acted in self-defense. *Id.* The motions lack any sound basis in the controlling facts or law of the case. His case was properly dismissed without prejudice for failure to exhaust.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioner Arturo Anaya’s “Motion to U.S. District Judge on Prima Facie Evidence” [Doc. 38] is **DENIED**.

IT IS FURTHER ORDERED that Petitioner’s Motion for New Trial [Doc. 41] is **DENIED**.

IT IS SO ORDERED.



MARTHA VAZQUEZ
United States District Judge